IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 13.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.217 of 2006

Mrs.Jothi ... Petitioner

Vs.

1. The Secretary to the Government,
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2. The District Magistrate
and District Collector,
Thiruvarur District,
Thiruvarur. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the entire records relating to the detention order dated 31.01.2006 made in detention order C.O.C.No.1 of 2006 passed by the second respondent, quash the same, direct the respondents to produce the body of the detenu by name Ramesh @ Katta Ramesh, who has been detained in Central Prison at Trichy, before this Court and set him at liberty.

For Petitioner : Mr. T.P.Senthilkumar

For Respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor.

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner herein challenges the impugned order of detention dated 31.01.2006, detaining her son as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel appearing for the petitioner submitted that even according to the Sponsoring Authority, the ground case occurrence took place on 13.01.2006 at 10.30 A.M.; the accused was arrested and confessional statement was obtained at 11 A.M.; F.I.R. was registered at 1 P.M.; and thereafter, a Crime Number was assigned. That being so, even in the confessional statement, which was obtained at 11 A.M., Crime Number was specifically referred to, which creates a doubt regarding the occurrence said to have taken place on 13.01.2006. According to the counsel, this relevant aspect was not considered by the Detaining Authority.

4. In the affidavit filed in support of the above petition, in ground (n), this objection has been specifically raised. Though the second respondent has filed counter affidavit, the said authority has not denied the same, however, has stated,

" ..... The mentioning of Cr.No. and Section of Law in the Confession statement of detenu dated 13.1.2006 at about 11.00 A.M. is only by hand written mistake. This type of error will not prejudice or vitiate the proceedings merely because of mentioning the Cr.No. and Section of Law to confession statement will not give right to the detenu to erode the proceedings. This may be unlawful but not illegal. "

5. Considering the fact that the alleged occurrence took place on 13.01.2006 at 10.30 A.M.; that the Sub Inspector of Police arrested the accused/detenu at 11 A.M. and obtained confessional statement from the detenu at 11 A.M. in the presence of two witnesses and seized a patta knife from him based on his confession at 12.15 P.M.; that the Sub Inspector of Police produced the detenu before the Inspector of Police and handed over the statements and other articles at 1 P.M. and thereafter, the

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Inspector of Police registered a case in Cr. No.10 of 2006 under Sections 294(b), 341, 324, 332 and 307 IPC. against the detenu; as rightly pointed out by the learned counsel for the petitioner, it is not clear as to how the confessional statement, which was recorded at 11 A.M., contained the Crime Number. We have already referred to the inept explanation offered by the 2nd respondent. In such circumstances, in the absence of proper explanation, we are of the view that the Detaining Authority has not applied his mind to this vital aspect before passing the order of detention.

6. Learned Additional Public Prosecutor, though relied on two Division Bench Judgments, viz., HCP No.11 of 2003, dated 14.10.2003, and HCP No.151 of 2003, dated 30.10.2003, it is not in dispute that in those cases, counter affidavit was filed, stating that the Inspector of Police concerned was having a phone and he ascertained the Crime Number over telephone and it was in pursuance of the same, the crime number was mentioned in the arrest memo therein. In view of the explanation offered by the person concerned and in the absence of such clarification/explanation in the case on hand, we are of the view that the decisions relied on by the learned Additional Public Prosecutor are not helpful to his defence. In the light of the infirmity as pointed out above, we have no other option except to interfere with the impugned order.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The District Magistrate and District Collector,
   Thiruvarur District.

3. The Superintendent, Central Prison, Trichy.
   (In duplicate for service on the detenu)

4. The Joint Secretary to Govt., Public (Law & Order),
   Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.T.P. Senthil Kumar, Advocate SR No.24798

JSK(CO)
SR/20.6.2006 HCP No.217 of 2006.

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